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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,298	10/31/2000	Steven A. Bogen	1159.1004-005	3668
21005	7590	06/12/2003		
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			EXAMINER	ALEXANDER. LYLE
			ART UNIT	PAPER NUMBER
			1743	15

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/702,298	BOGEN ET AL.	
	Examiner Lyle A Alexander	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 June 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>13</u> . | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1743

In response to the 6/3/03 IDS, a new reference, MaWhinney, has been discovered and is relevant to the prosecution of the instant claims. MaWhinney was cited in the 10/2/00 IDS, but no copy was supplied to the Examiner to consider. MaWhinney was cited and considered in the parent applications now USP 6,180,061 and 5,947,167 and Applicants were under no obligation to provide the physical copy of the reference because it was previously cited. The Office could not locate the non-USP references in the 10/2/00 IDS and had not considered them to date. Applicants were gracious to supply all of the non-USP previously not considered. The Office regrets the delay to Applicant by this belated citing of MaWhinney. This Office action is non-final. The 6/3/03 amendments after final have been entered and obviate the 35 USC 112 second paragraph rejections of 3/5/03 final office action.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by MaWhinney et al.

MaWhinney et al. teach on page 592 and in Fig. 2 a bank of eight slide chambers fitted to receive the standard 25X75 mm microscope slide. Each chamber is comprises "O" rings to isolate each slide and chamber inlet/outlet pipes that supply and remove reagents. The supply of reagents to the slides is automated, under computer control. The claimed slide housing has been read on the taught slide chambers and the liquid dispenser/aspirator on the chamber inlet/outlet pipes.

MaWhinney et al. teaches on page 596 the individual slides may be heated or cooled from underneath the slide which has been read on the claimed 'heating element adjacent to the slide".

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rhett et al. teaches an automated slide staining apparatus having means to aspirate the sample from the surface of a slide. However, Rhett et al. fails to qualify as prior art because the instant invention has an earlier effective filing date of 5/31/94.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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June 11, 2003